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8 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

9
10 **In the Matter of:**

11 **SURRYDOWNS CHILDREN**
12 **CENTER, INC., and**
13 **KING COUNTY, WASHINGTON.**

Docket No. TSCA-10-2005-0151

COMPLAINT

14
15 **I. JURISDICTION**

16 **1. This Complaint is issued by Region 10 of the United States Environmental**
17 **Protection Agency (EPA) pursuant to Section 16(a) of the Toxic Substances Control Act**
18 **(TSCA), 15 U.S.C. § 2615(a). In this action, EPA seeks the assessment of a civil penalty**
19 **against Surrydowns Children Center, Inc. (Respondent). The undersigned Director of the**
20 **Office of Compliance and Enforcement has been delegated the authority to commence this**
21 **action.**

22 **2. Respondent has failed to comply with regulations pertaining to the use, storage**
23 **and disposal of polychlorinated biphenyls (PCBs). These regulations were promulgated**
24 **pursuant to Section 6 of TSCA, 15 U.S.C. § 2605, and are fully set forth at 40 C.F.R. Part**
25 **761. According to Section 15 of TSCA, 15 U.S.C. § 2614, it is unlawful for Respondent to**
26 **have failed to comply with the PCB regulations.**

27 **COMPLAINT**
28 **Docket No. TSCA-10-2005-0151**
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U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Seattle, WA 98101
(206) 553-1797

1 **II. FACTUAL ALLEGATIONS**

2 **3. Surrydowns Children Center, Inc., is a for-profit corporation licensed to do**
3 **business in the state of Washington.**

4 **4. On August 5 and 10, 2004, EPA conducted inspections of Surrydowns Children's**
5 **Center located at 609 112th Avenue SE in Bellevue, Washington.**

6 **5. At the time of the inspections, Respondent was operating Surrydowns Children's**
7 **Center as a daycare facility for children.**

8 **6. At the time of the inspections, the Surrydowns Children's Center property was**
9 **owned by King County, Washington (KC), who was leasing this property to Respondent.**

10 **7. For twenty years or more prior to the inspections, the Surrydowns Children's**
11 **Center property had been leased by Respondent from KC, and during this entire time**
12 **Respondent had operated a daycare facility for children at this property.**

13 **8. Prior to the inspections, Respondent had not notified EPA of any PCB waste**
14 **handling activity at the daycare facility, and had not obtained an EPA identification**
15 **number for PCB waste handling activity at the daycare facility.**

16 **9. EPA obtained samples during the inspections and submitted these samples to a**
17 **laboratory for analysis.**

18 **10. The sampling and analysis was conducted pursuant to applicable methods and**
19 **protocol, and in accordance with acceptable quality assurance and quality control**
20 **techniques.**

21 **11. The conditions described in paragraphs 12 through 27 below existed at the**
22 **Surrydowns Children's Center daycare facility at the time of the EPA inspections.**

23 **12. In the main office area, there was PCB liquid at a concentration of 81 parts per**
24 **million (ppm) that had been discharged onto a fluorescent light fixture tray hanging from**
25 **the ceiling immediately beneath a fluorescent light ballast.**

1 **13. In the main office area, there was PCB liquid at a concentration of 390 ppm that**
2 **had been discharged onto a fluorescent light fixture tray hanging from the ceiling**
3 **immediately beneath a fluorescent light ballast.**

4 **14. In the pre-school 3 area, there was PCB liquid at a concentration of 460,000 ppm**
5 **that had been discharged onto a fluorescent light fixture tray hanging from the ceiling**
6 **immediately beneath a fluorescent light ballast.**

7 **15. In the pre-school 3 area, there was PCB liquid at a concentration of 140,000 ppm**
8 **that had been discharged onto a fluorescent light fixture tray hanging from the ceiling**
9 **immediately beneath a fluorescent light ballast.**

10 **16. In the pre-school 3 area, there was a plastic container with no top located on the**
11 **floor, and there was PCB liquid at a concentration of 310 ppm in the open container.**

12 **17. There were no markings either in the pre-school 3 area or on the open plastic**
13 **container indicating the presence of PCBs.**

14 **18. In the after school area, there was PCB liquid at a concentration of 96,000 ppm that**
15 **had been discharged onto a fluorescent light fixture tray hanging from the ceiling**
16 **immediately beneath a fluorescent light ballast.**

17 **19. In the after school area, there was PCB liquid at a concentration of 920 ppm that**
18 **had been discharged onto a fluorescent light fixture tray hanging from the ceiling**
19 **immediately beneath a fluorescent light ballast.**

20 **20. In the after school area, there was PCB liquid at a concentration of 58 ppm that**
21 **had been discharged onto a fluorescent light fixture tray hanging from the ceiling**
22 **immediately beneath a fluorescent light ballast.**

23 **21. In the pre-kindergarten/kindergarten area, there was PCB liquid at a concentration**
24 **of 1,100 ppm that had been discharged onto a fluorescent light fixture tray hanging from**
25 **the ceiling immediately beneath a fluorescent light ballast.**

1 **22. In the pre-kindergarten/kindergarten area, there was PCB liquid at a concentration**
2 **of 210 ppm that had been discharged onto a fluorescent light fixture tray hanging from the**
3 **ceiling immediately beneath a fluorescent light ballast.**

4 **23. In the pre-kindergarten/kindergarten area, there was PCB liquid at a concentration**
5 **of 390,000 ppm that had been discharged onto a fluorescent light fixture tray hanging**
6 **from the ceiling.**

7 **24. In the pre-kindergarten/kindergarten area, there was PCB liquid at a concentration**
8 **of 1,500,000 ppm that had been discharged onto a fluorescent light fixture tray and wires**
9 **hanging from the ceiling immediately beneath a fluorescent light ballast.**

10 **25. In the pre-school 4 area, there was PCB liquid at a concentration of 3,300,000 ppm**
11 **that had been discharged onto a fluorescent light fixture tray hanging from the ceiling**
12 **immediately beneath a fluorescent light ballast.**

13 **26. In the pre-school 4 area, there was PCB liquid at a concentration of 1,700,000 ppm**
14 **that had been discharged onto a fluorescent light fixture tray hanging from the ceiling**
15 **immediately beneath a fluorescent light ballast.**

16 **27. In the pre-school 4 area, there was PCB liquid at a concentration of 92 ppm that**
17 **had been discharged onto carpeting located on the floor beneath a fluorescent light fixture**
18 **and ballast hanging from the ceiling in this area.**

19 **28. Subsequent to the inspections, EPA requested that Respondent and KC conduct a**
20 **cleanup of PCBs at Surrydowns Children's Center. KC agreed to undertake such a**
21 **cleanup, and incurred costs of more than \$80,000 to abate the release of PCBs at the**
22 **daycare facility. Respondent did not participate in funding the cleanup of PCBs.**

23 **29. Prior to issuance of this Complaint, Respondent and KC were each offered an**
24 **opportunity by EPA to settle the respective TSCA penalty claims against them. KC was**
25 **receptive to this offer, and EPA reached a settlement of its claims against KC. Respondent**
26 **failed to pursue the opportunity offered by EPA to settle the TSCA penalty claims.**

III. CONCLUSIONS OF LAW

30. Respondent is a "person," as that term is defined at 40 C.F.R. § 761.3, and are each subject to the requirements of Sections 15 and 16 of TSCA, 15 U.S.C. §§ 2614 & 2615.

31. At the time of the EPA inspections, Respondent was the operator of Surrydowns Children's Center daycare facility.

32. At the time of the EPA inspections, KC was the owner of the Surrydowns Children's Center property.

33. As operator of Surrydowns Children's Center daycare facility, Respondent has liability for the violations of TSCA set forth herein.

34. The PCBs on the fluorescent light fixture trays, carpeting, wires, and in the plastic container at Surrydowns Children's Center daycare facility, as described in paragraphs 12 through 27 above, were "Liquid PCBs" as that term is defined at 40 C.F.R. § 761.3.

35. The plastic container with PCB liquid located in pre-school 3 area was a "PCB Container" and a "PCB Item" as those terms are defined at 40 C.F.R. § 761.3.

36. The PCB liquids on the fluorescent light fixture trays, carpeting, and wires, and in the plastic container at Surrydowns Children's Center daycare facility, as described in paragraphs 12 through 27 above, constitutes the "leak or leaking" and the "disposal" of PCBs as those terms are defined at 40 C.F.R. § 761.3.

37. The PCB liquids on the fluorescent light fixture trays, carpeting, and wires, and in the plastic container at Surrydowns Children's Center daycare facility, as described in paragraphs 12 through 27 above, was "PCB waste," as that term is defined at 40 C.F.R. § 761.3, that was subject to the disposal requirements at 40 C.F.R. § 761.60.

IV. VIOLATIONS

38. *Violation #1.* There was PCB liquid at a concentration of 81 ppm discharged onto a fluorescent light fixture tray in the main office area of Surrydowns Children's Center daycare facility. This discharge of PCB liquid constituted the disposal of PCBs at a

1 concentration of greater than 50 ppm. This PCB liquid had not been disposed of in
2 accordance with the requirements of 40 C.F.R. § 761.60(a). As a result, Respondent
3 committed a violation of that regulation.

4 39. *Violation #2.* There was PCB liquid at a concentration of 390 ppm discharged onto a
5 fluorescent light fixture tray in the main office area of Surrydowns's Children's Center
6 daycare facility. This discharge of PCB liquid constituted the disposal of PCBs at a
7 concentration of greater than 50 ppm. This PCB liquid had not been disposed of in
8 accordance with the requirements of 40 C.F.R. § 761.60(a). As a result, Respondent
9 committed a violation of that regulation.

10 40. *Violation #3.* There was PCB liquid at a concentration of 460,000 ppm discharged
11 onto a fluorescent light fixture tray in the pre-school 3 area of Surrydowns's Children's
12 Center daycare facility. This discharge of PCB liquid constituted the disposal of PCBs at a
13 concentration of greater than 50 ppm. This PCB liquid had not been disposed of in
14 accordance with the requirements of 40 C.F.R. § 761.60(a). As a result, Respondent
15 committed a violation of that regulation.

16 41. *Violation #4.* There was PCB liquid at a concentration of 140,000 discharged onto a
17 fluorescent light fixture tray in the pre-school 3 area of Surrydowns Children's Center
18 daycare facility. This discharge of PCB liquid constituted the disposal of PCBs at a
19 concentration of greater than 50 ppm. This PCB liquid had not been disposed of in
20 accordance with the requirements of 40 C.F.R. § 761.60(a). As a result, Respondent
21 committed a violation of that regulation.

22 42. *Violation #5.* There was PCB liquid at a concentration of 310 ppm discharged into a
23 plastic container on the floor of pre-school 3 area at Surrydowns's Children's Center
24 daycare facility. This discharge of PCB liquid constituted the disposal of PCBs at a
25 concentration of greater than 50 ppm. This PCB liquid had not been disposed of in
26

1 accordance with the requirements of 40 C.F.R. § 761.60(a). As a result, Respondent
2 committed a violation of that regulation.

3 43. *Violation #6.* There was PCB liquid at a concentration of 310 ppm stored in a plastic
4 container on the floor of pre-school 3 area at Surrydowns children's Center daycare facility.
5 The plastic container was not marked in accordance with the requirements of 40 C.F.R.
6 § 761.40(a)(1). As a result, Respondent committed a violation of that regulation.

7 44. *Violation #7.* There was PCB liquid at a concentration of 310 ppm stored in a plastic
8 container on the floor of pre-school 3 area at Surrydowns Children's Center daycare
9 facility. The pre-school 3 area was not marked in accordance with the requirements of 40
10 C.F.R. §§ 761.40(a)(10) and 761.65(c)(3). As a result, Respondent committed a violation of
11 those regulations.

12 45. *Violation #8.* There was PCB liquid at a concentration of 310 ppm stored in a plastic
13 container on the floor of pre-school 3 area at Surrydowns Children's Center daycare
14 facility. The plastic container used to store the PCB liquid did not meet the standards of the
15 Department of Transportation as required by 40 C.F.R. § 761.65(c)(6). As a result,
16 Respondent committed a violation of that regulation.

17 46. *Violation #9.* There was PCB waste at a concentration of 310 ppm stored in a plastic
18 container on the floor of pre-school 3 area at Surrydowns Children's Center daycare
19 facility. As generator of this PCB waste, Respondent failed to provide notification to EPA
20 as required by 40 C.F.R. § 761.205(a)(2), and failed to obtain an EPA identification number
21 as required by 40 C.F.R. § 761.202(b)(1). As a result, Respondent committed a violation of
22 those regulations.

23 47. *Violation #10.* There was PCB liquid at a concentration of 96,000 ppm discharged
24 onto a fluorescent light fixture tray in the after school area of Surrydowns Children's
25 Center daycare facility. This discharge of PCB liquid constituted the disposal of PCBs at a
26 concentration of greater than 50 ppm. This PCB liquid had not been disposed of in

1 accordance with the requirements of 40 C.F.R. § 761.60(a). As a result, Respondent
2 committed a violation of that regulation.

3 **48. Violation #11.** There was PCB liquid at a concentration of 920 ppm discharged onto
4 a fluorescent light fixture tray in the after school area of Surrydowns Children's Center
5 daycare facility. This discharge of PCB liquid constituted the disposal of PCBs at a
6 concentration of greater than 50 ppm. This PCB liquid had not been disposed of in
7 accordance with the requirements of 40 C.F.R. § 761.65(a). As a result, Respondent
8 committed a violation of that regulation.

9 **49. Violation #12.** There was PCB liquid at a concentration of 58 ppm discharged onto a
10 fluorescent light fixture tray in the after school area of Surrydowns Children's Center
11 daycare facility. This discharge of PCB liquid constituted the disposal of PCBs at a
12 concentration of greater than 50 ppm. This PCB liquid had not been disposed of in
13 accordance with the requirements of 40 C.F.R. § 761.60(a). As a result, Respondent
14 committed a violation of that regulation.

15 **50. Violation #13.** There was PCB liquid at a concentration of 1,100 ppm discharged
16 onto a fluorescent light fixture tray in the pre-kindergarten/kindergarten area of
17 Surrydowns Children's Center daycare facility. This discharge of PCB liquid constituted
18 the disposal of PCBs at a concentration of greater than 50 ppm. This PCB liquid had not
19 been disposed of in accordance with the requirements of 40 C.F.R. § 761.60(a). As a result,
20 Respondent committed a violation of that regulation.

21 **51. Violation #14 .** There was PCB liquid at a concentration of 210 ppm discharged onto
22 a fluorescent light fixture tray in the pre-kindergarten/kindergarten area of Surrydowns
23 Children's Center daycare facility. This discharge of PCB liquid constituted the disposal of
24 PCBs at a concentration of greater than 50 ppm. This PCB liquid had not been disposed of
25 in accordance with the requirements of 40 C.F.R. § 761.60(a). As a result, Respondent
26 committed a violation of that regulation.

1 **52. Violation #15 .** There was PCB liquid at a concentration of 390,000 ppm discharged
2 onto a fluorescent light fixture tray in the pre-kindergarten/kindergarten area of
3 Surrydowns Children's Center daycare facility. This discharge of PCB liquid constituted
4 the disposal of PCBs at a concentration of greater than 50 ppm. This PCB liquid had not
5 been disposed of in accordance with the requirements of 40 C.F.R. § 761.60(a). As a result,
6 Respondent committed a violation of that regulation.

7 **53. Violation #16.** There was PCB liquid at a concentration of 1,500,000 ppm
8 discharged onto a fluorescent light fixture tray in the pre-kindergarten/kindergarten area of
9 Surrydowns Children's Center daycare facility. This discharge of PCB liquid constituted
10 the disposal of PCBs at a concentration of greater than 50 ppm. This PCB liquid had not
11 been disposed of in accordance with the requirements of 40 C.F.R. § 761.60(a). As a result,
12 Respondent committed a violation of that regulation.

13 **54. Violation #17.** There was PCB liquid at a concentration of 3,300,000 ppm
14 discharged onto a fluorescent light fixture tray in the pre-school 4 area of Surrydowns
15 Children's Center daycare facility. This discharge of PCB liquid constituted the disposal of
16 PCBs at a concentration of greater than 50 ppm. This PCB liquid had not been disposed of
17 in accordance with the requirements of 40 C.F.R. § 761.60(a). As a result, Respondent
18 committed a violation of that regulations.

19 **55. Violation #18.** There was PCB liquid at a concentration of 1,700,000 ppm
20 discharged onto a fluorescent light fixture tray in the pre-school 4 area of Surrydowns
21 Children's Center daycare facility. This discharge of PCB liquid constituted the disposal of
22 PCBs at a concentration of greater than 50 ppm. This PCB liquid had not been disposed of
23 in accordance with the requirements of 40 C.F.R. § 761.60(a). As a result, Respondent
24 committed a violation of that regulation.

25 **56. Violation #19.** There was PCB liquid at a concentration of 92 ppm discharged onto
26 the carpeting in the pre-school 4 area of Surrydowns Children's Center daycare facility.

1 This discharge of PCB liquid constituted the disposal of PCBs at a concentration of greater
2 than 50 ppm. This PCB liquid had not been disposed of in accordance with the
3 requirements of 40 C.F.R. § 761.60(a). As a result, Respondent committed a violation of
4 that regulation.

5 **V. PROPOSED CIVIL PENALTY**

6 57. Section 16 of TSCA, 15 U.S.C. § 2615, and the Civil Monetary Penalty Inflation
7 Adjustment Rule, 40 C.F.R. Part 19, authorize a civil penalty of up to \$32,500 per day for
8 each violation of TSCA. EPA has calculated a proposed civil penalty to be assessed against
9 Respondent by application of the factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C.
10 § 2615(a)(2)(B). These factors include the nature, circumstances, extent, and gravity of the
11 violations, as well as the ability to pay, effect on the ability to continue to do business,
12 history of prior such violations, and degree of culpability of Respondent, along with such
13 other matters as justice may require. In an effort to achieve a fair and consistent
14 application of these factors, EPA has followed the approach outlined in the
15 "Polychlorinated Biphenyls (PCB) Penalty Policy", dated April 9, 1990 (PCB Penalty
16 Policy).

17 58. By applying the PCB Penalty Policy criteria to the facts in this case, Complainant
18 has calculated a total proposed civil penalty of forty-four thousand nine hundred and
19 twenty-five dollars (\$44,925). The gravity portion of this proposed penalty amount, which
20 includes application of the nature, extent and circumstances factors of TSCA, is delineated
21 for the violations as follows:

22 A. *Violations #1 and #2.* As prescribed by the PCB Penalty Policy, these disposal
23 violations are being combined for the purpose of calculating the associated penalty, because
24 the violations appear to have occurred within the same area. Based upon the amount of
25 PCBs, the extent of these disposal violations is "minor" according to the Gravity Based
26 Penalty Matrix of the PCB Penalty Policy. The circumstances or probability of damages

1 posed by these disposal violations is "Level 3" according to the Gravity Based Penalty
2 Matrix of the PCB Penalty Policy. As a result, these violations warrant the assessment of a
3 civil penalty in the amount of \$1,725.

4 **B. Violation #3.** In keeping with the dictates of the PCB Penalty Policy, while this
5 disposal violation may have occurred in the same area as disposal violations #4 and #5, the
6 extremely high concentration of PCBs involved with this disposal violation creates an
7 associated risk which warrants a separate penalty amount. Based upon the amount of
8 PCBs, the extent of this disposal violation is "minor" according to the Gravity Based
9 Penalty Matrix of the PCB Penalty Policy. The circumstances or probability of damages
10 posed by this disposal violation is "Level 3" according to the Gravity Based Penalty Matrix
11 of the PCB Penalty Policy. As a result, this violation warrants the assessment of a civil
12 penalty in the amount of \$1,725.

13 **C. Violation #4.** In keeping with the dictates of the PCB Penalty Policy, while
14 this disposal violation may have occurred in the same area as disposal violations #3 and #5,
15 the extremely high concentration of PCBs involved with this disposal violation creates an
16 associated risk which warrants a separate penalty amount. Based upon the amount of
17 PCBs, the extent of this disposal violation is "minor" according to the Gravity Based
18 Penalty Matrix of the PCB Penalty Policy. The circumstances or probability of damages
19 posed by this disposal violation is "Level 3" according to the Gravity Based Penalty Matrix
20 of the PCB Penalty Policy. As a result, this violation warrants the assessment of a civil
21 penalty in the amount of \$1,725.

22 **D. Violation #5.** In keeping with the dictates of the PCB Penalty Policy, while
23 this disposal violation may have occurred in the same area as disposal violations #3 and #4,
24 the extremely high concentration of PCBs, and the precarious location of the PCBs, involved
25 with this disposal violation creates an associated risk which warrants a separate penalty
26 amount. Based upon the amount of PCBs, the extent of this disposal violation is "minor"

1 according to the Gravity Based Penalty Matrix of the PCB Penalty Policy. The
2 circumstances or probability of damages posed by this disposal violation is "Level 1"
3 according to the Gravity Based Penalty Matrix of the PCB Penalty Policy. As a result, this
4 violation warrants the assessment of a civil penalty in the amount of \$5,775.

5 E. *Violation #6.* Based upon the amount of PCBs, the extent of this non-disposal
6 violation is "minor" according to the Gravity Based Penalty Matrix of the PCB Penalty
7 Policy. The circumstances or probability of damages posed by this non-disposal violation is
8 "Level 2" according to the Gravity Based Penalty Matrix of the PCB Penalty Policy. As a
9 result, this violation warrants the assessment of a civil penalty in the amount of \$3,450.

10 F. *Violation #7.* Based upon the amount of PCBs, the extent of this non-disposal
11 violation is "minor" according to the Gravity Based Penalty Matrix of the PCB Penalty
12 Policy. The circumstances or probability of damages posed by this non-disposal violation is
13 "Level 2" according to the Gravity Base Penalty Matrix of the PCB Penalty Policy. As a
14 result, this violation warrants the assessment of a civil penalty in the amount of \$3,450.

15 G. *Violation #8.* Based upon the amount of PCBs, the extent of this non-disposal
16 violation is "minor" according to the Gravity Based Penalty Matrix of the PCB Penalty
17 Policy. The circumstances or probability of damages posed by this non-disposal violation is
18 "Level 2" according to the Gravity Based Penalty Matrix of the PCB Penalty Policy. As a
19 result, this violation warrants the assessment of a civil penalty in the amount of \$3,450.

20 H. *Violation #9.* Based upon the amount of PCBs, the extent of this non-disposal
21 violation is "minor" according to the Gravity Based Penalty Matrix of the PCB Penalty
22 Policy. The circumstances or probability of damages posed by this non-disposal violation is
23 "Level 1" according to the Gravity Based Penalty Matrix of the PCB Penalty Policy. As a
24 result, this violation warrants the assessment of a civil penalty in the amount of \$5,775.

25 I. *Violation #10.* In keeping with the dictates of the PCB Penalty Policy, while
26 this disposal violation may have occurred in the same area as disposal violations #11 and

1 #12, the extremely high concentration of PCBs involved with this disposal violation creates
2 an associated risk which warrants a separate penalty amount. Based upon the amount of
3 PCBs, the extent of this disposal violation is "minor" according to the Gravity Based
4 Penalty Matrix of the PCB Penalty Policy. The circumstances or probability of damages
5 posed by this disposal violation is "Level 3" according to the Gravity Based Penalty Matrix
6 of the PCB Penalty Policy. As a result, this violation warrants the assessment of a civil
7 penalty in the amount of \$1,725.

8 *J. Violations #11 and #12.* As prescribed by the PCB Penalty Policy, these
9 disposal violations are being combined for the purpose of calculating the associated penalty,
10 because the violations appear to have occurred in the same area. Based upon the amount of
11 PCBs, the extent of these disposal violations is "minor" according to the Gravity Based
12 Penalty Matrix of the PCB Penalty Policy. The circumstances or probability of damages
13 posed by these disposal violations is "Level 3" according to the Gravity Based Penalty
14 Matrix of the PCB Penalty Policy. As a result, these violations warrant the assessment of a
15 civil penalty in the amount of \$1,725.

16 *K. Violations #13 and #14.* As prescribed by the PCB Penalty Policy, these
17 disposal violations are being combined for the purpose of calculating the associated penalty,
18 because the violations appear to have occurred in the same area. Based upon the amount of
19 PCBs, the extent of these disposal violations is "minor" according to the Gravity Based
20 Penalty Matrix of the PCB Penalty Policy. The circumstances or probability of damages
21 posed by these disposal violations is "Level 3" according to the Gravity Based Penalty
22 Matrix of the PCB Penalty Policy. As a result, these violations warrant the assessment of a
23 civil penalty in the amount of \$1,725.

24 *L. Violation #15.* Based upon the amount of PCBs, the extent of this disposal
25 violation is "minor" according to the Gravity Based Penalty Matrix of the PCB Penalty
26 Policy. The circumstances or probability of damages posed by this disposal violation is

1 "Level 1" according to the Gravity Based Penalty Matrix of the PCB Penalty Policy. As a
2 result, this violation warrants the assessment of a civil penalty in the amount of \$5,775.

3 M. *Violation #15.* In keeping with the dictates of the PCB Penalty Policy, while
4 this disposal violation may have occurred in the same area as disposal violations #13, #14
5 and #16, the extremely high concentration of PCBs involved with this disposal violation
6 creates an associated risk which warrants a separate penalty amount. Based upon the
7 amount of PCBs, the extent of this disposal violation is "minor" according to the Gravity
8 Based Penalty Matrix of the PCB Penalty Policy. The circumstances or probability of
9 damages posed by this disposal violation is "Level 3" according to the Gravity Based
10 Penalty Matrix of the PCB Penalty Policy. As a result, this violation warrants the
11 assessment of a civil penalty in the amount of \$1,725.

12 N. *Violation #16.* In keeping with the dictates of the PCB Penalty Policy, while
13 this disposal violation may have occurred in the same area as disposal violations #13, #14
14 and #15, the extremely high concentration of PCBs involved with this disposal violation
15 creates an associated risk which warrants a separate penalty amount. Based upon the
16 amount of PCBs, the extent of this disposal violation is "minor" according to the Gravity
17 Based Penalty Matrix of the PCB Penalty Policy. The circumstances or probability of
18 damages posed by this disposal violation is "Level 3" according to the Gravity Based
19 Penalty Matrix of the PCB Penalty Policy. As a result, this violation warrants the
20 assessment of a civil penalty in the amount of \$1,725.

21 O. *Violation #17.* In keeping with the dictates of the PCB Penalty Policy, while
22 this disposal violation may have occurred in the same area as disposal violations #18 and
23 #19, the extremely high concentration of PCBs involved with this disposal violation creates
24 an associated risk which warrants a separate penalty amount. Based upon the amount of
25 PCBs, the extent of this disposal violation is "minor" according to the Gravity Based
26 Penalty Matrix of the PCB Penalty Policy. The circumstances or probability of damages

posed by this disposal violation is "Level 3" according to the Gravity Based Penalty Matrix of the PCB Penalty Policy. As a result, this violation warrants the assessment of a civil penalty in the amount of \$1,725.

P. *Violation #18.* In keeping with the dictates of the PCB Penalty Policy, while this disposal violation may have occurred in the same area as disposal violations #17 and #19, the extremely high concentration of PCBs involved with this disposal violation creates an associated risk which warrants a separate penalty amount. Based upon the amount of PCBs, the extent of this disposal violation is "minor" according to the Gravity Based Penalty Matrix of the PCB Penalty Policy. The circumstances or probability of damages posed by this disposal violation is "Level 3" according to the Gravity Based Penalty Matrix of the PCB Penalty Policy. As a result, this violation warrants the assessment of a civil penalty in the amount of \$1,725.

Q. *Violation #19.* In keeping with the dictates of the PCB Penalty Policy, while this disposal violation may have occurred in the same area as disposal violations #17 and #18, the extremely high concentration of PCBs, and the precarious location of the PCBs, involved with this disposal violations creates an associated risk which warrants a separate penalty amount. Based upon the amount of PCBs, the extent of this disposal violation is "minor" according to the Gravity Based Penalty Matrix of the PCB Penalty Policy. The circumstances or probability of damages posed by this disposal violation is "Level 1" according to the Gravity Based Penalty Matrix of the PCB Penalty Policy. As a result, this violation warrants the assessment of a civil penalty in the amount of \$5,775.

59. EPA has no information suggesting that the gravity-based penalty amount should be adjusted downward based upon a consideration of the history of prior such violation, ability to pay, or ability to continue in business of Respondent. As for culpability and such other matters as justice may require, there is information suggesting that the gravity based penalty amount should not be adjusted downward based upon a consideration of these

factors. The PCB Spill Cleanup Policy (Cleanup Policy) set forth at 40 C.F.R. Part 761, Subpart G, establishes criteria utilized to determine the adequacy of a cleanup of spills of PCBs at a concentration of 50 ppm or greater. Respondent is a "responsible party" subject to the terms of the Cleanup Policy; however, Respondent failed to comply with the Cleanup Policy in response to conditions at the daycare facility. This failure by Respondent to act in a responsible manner with respect to the PCBs occurred even after EPA specifically requested that Respondent undertake such a cleanup.

60. Taking into account all of the statutory factors, the proposed assessed penalty is calculated as follows:

<u>VIOLATION</u>	<u>REGULATION(S)</u>	<u>REQUIREMENT</u>	<u>PENALTY</u>
#1	761.60(a)	Disposal	\$1,725
#2	761.60(a)	Disposal	
#3	761.60(a)	Disposal	\$1,725
#4	761.60(a)	Disposal	\$1,725
#5	761.60(a)	Disposal	\$5,775
#6	761.40(a)(1)	Marking	\$3,450
#7	761.65(c)(3) 761.40(a)(10)	Marking	\$3,450
#8	761.65(c)(6)	Container	\$3,450
#9	761.205(a)(2) 761.202(b)(1)	Notification I.D. #	\$5,775
#10	761.60(a)	Disposal	\$1,725
#11	761.60(a)	Disposal	\$1,725
#12	761.60(a)	Disposal	
#13	761.60(a)	Disposal	\$1,725
#14	761.60(a)	Disposal	
#15	761.60(a)	Disposal	\$1,725
#16	761.60(a)	Disposal	\$1,725
#17	761.60(a)	Disposal	\$1,725

#18	761.60(a)	Disposal	\$1,725
#19	761.60(a)	Disposal	\$5,775
			TOTAL = \$44,925

VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

61. The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits" (Rules), 40 C.F.R. Part 22, govern this proceeding. A copy of the Rules is being provided to Respondent along with this Complaint. Under the Rules, Respondent has the right to request a formal hearing to contest any material fact set forth in this Complaint or to contest the appropriateness of the proposed penalty.

62. To avoid being found in default, which constitutes an admission of all material facts alleged in this Complaint and a waiver of the right to a hearing, and which will effect the assessment of the proposed civil penalty without further proceedings, Respondent must file, with the Regional Hearing Clerk, a written Answer within thirty (30) days after receiving this Complaint. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which Respondent has any knowledge. Where Respondent has no knowledge of a particular fact and so state, the allegation is deemed denied. Failure to deny any material factual allegation constitutes an admission of the allegation. The Answer shall also state: (a) the circumstances or arguments which are alleged to constitute the grounds of defense; (b) the facts which Respondent intends to place at issue; and (c) whether a hearing is requested. A hearing is deemed requested should Respondent contest any material fact upon which this Complaint is based or raise any affirmative defense, or contend that the amount of the proposed penalty is inappropriate, or claim that Respondent is entitled to judgment as a matter of law. The Answer must be sent to:

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U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Seattle, WA 98101
(206) 553-1797

1 **Regional Hearing Clerk**
2 **U.S. Environmental Protection Agency**
3 **1200 Sixth Avenue, ORC-158**
4 **Seattle, Washington 98101**

5 **63. A copy of the Answer and all other documents which Respondent files in this action**
6 **must be furnished to Richard Mednick, Associate Regional Counsel, the attorney assigned**
7 **to represent EPA in this matter, at:**

8 **Office of Regional Counsel, Region 10**
9 **U.S. Environmental Protection Agency**
10 **1200 Sixth Avenue, ORC-158**
11 **Seattle, Washington 98101**

12 **64. Failure to file an Answer or otherwise properly respond to this Complaint may**
13 **result in a default order being issued which assesses the full amount of the proposed**
14 **penalty. A copy of the PCB Penalty Policy is being provided to Respondent along with this**
15 **Complaint. A copy of the Small Business Policy is also being provided to Respondent along**
16 **with this Complaint.**

17 **VII. INFORMAL SETTLEMENT CONFERENCE**

18 **65. Whether or not a hearing is requested, Respondent may contact the above-named**
19 **attorney to arrange for an informal settlement conference to discuss the facts of this case,**
20 **the amount of the proposed penalty, or the possibility of settlement. Any informal**
21 **settlement conference does not, however, affect the obligation of Respondent to file a timely**
22 **written Answer, which is due within thirty (30) days of receipt of this Complaint, unless**
23 **Complainant and Respondent agree to a later date.**

24 **66. Complainant has the authority to modify the amount of the proposed penalty, where**
25 **appropriate, to reflect any settlement reached with Respondent in an informal conference.**
26 **The terms of such an agreement would be embodied in a Consent Agreement and Final**
27 **Order. A Consent Agreement and Final Order entered into between Complainant and**
28 **Respondent would be binding as to all terms and conditions contained therein upon**
signature by the EPA Regional Administrator.

67. Respondent is advised that, after this Complaint is issued, the Rules prohibit any ex parte (unilateral) discussion of the merits of these or any other factually related proceedings with the Administrative Law Judge, any member of the Environmental Appeals Board, or any person likely to advise these officials in the decision of this case.

VIII. PAYMENT OF PENALTY

68. Instead of requesting an informal settlement conference or filing a written Answer, Respondent may pay the total amount of the proposed penalty. In order to do so, Respondent must pay the proposed penalty within 30 days after receipt of the Complaint, and file a copy of the check with the Regional Hearing clerk (at the address noted in Section above). Respondent may obtain a 30 day extension to pay the proposed penalty without filing an Answer by complying with the requirements of 40 C.F.R. § 22.18(a). A copy of the check should also be provided to Mr. Mednick. Payment of the proposed penalty must be made by sending a cashier's or certified check payable to the "Treasurer, United States of America," in the full amount of the proposed penalty in this Complaint to the following:

Mellon Client Services Center
EPA Region 10
500 Ross Street
P.O. Box 360903
Pittsburgh, Pennsylvania 15251-6963

A transmittal letter indicating the name and address of Respondent, and this case docket number must accompany the payment. Such payment of the civil penalty terminates this administrative litigation and the civil proceedings arising out of the allegations made in this Complaint.

ISSUED AT SEATTLE this _____ day of _____, 2005.

Michael A. Bussell, Director
Office of Compliance and Enforcement
United States Environmental Protection Agency
Region 10